HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

C.R. No.5859 of 2005

Date of decision : 18.12.2006.

Surjit Singh and another **.....Petitioners**

versus

Jagir Kaur and others **.....Respondents**

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA.

Present : Mr.Ishwar Lal, Advocate for the petitioners

Mr.Rajan Gupta, Advocate for the respondents.

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ORDER

HEMANT GUPTA, J. (Oral)

The defendant Nos.3 & 4 are in revision petition aggrieved against the orders passed by the Courts below, whereby ad-interim injunction has been granted in favour of the plaintiff restraining the defendants from interfering in the possession of the plaintiff over the suit land.

It has been found that the plaintiff is owner of the land measuring 42 kanals-16 marlas. The defendants are relying upon the title on the basis of sale deed executed on 12.12.2003 by their father Gurdip Singh on the basis of a General Power of Attorney, executed by the plaintiff in his favour on 18.11.2002. The father of the petitioners is the son of law of the plaintiff-Jagir Kaur.

While granting injunction, it has been found that there is no evidence that the defendants have been delivered possession of the suit property in pursuance of the sale deed dated 12.12.2003. Consequently,

both the Courts below have granted ad-interim injunction in favour of the plaintiff.

The learned counsel for the petitioners has vehemently argued that it is for the plaintiff to prove that the possession of the suit property in with the plaintiff. It is alleged that since in the sale deed, there is a recital of delivery of possession in favour of the vendee, the petitioners are deemed to be in possession of the suit land. However, I do not find any merit in the argument raised by the learned counsel for the petitioners.

The plaintiff is 75 years of age and is an illiterate lady who has reposed faith in favour of her son in-law while executing the power of attorney on 18.11.2002. The sale deed has been executed by the Attorney in favour of his own sons. In these circumstances, it was for the defendants to prove that actual physical possession was handed over to the defendants. Both the Courts below have recorded a concurrent finding against the petitioners that the actual possession has not been delivered to the petitioners.

Learned counsel for the petitioners has referred to the jamabandi for the year 2003-2004 to contend that the possession of the land was delivered to the petitioners. The learned First Appellate Court has declined the said jamabandi to be taken into consideration, for the reasons that such jamabandi was not produced before the learned trial Court. Though the said fact alone is sufficient in the facts and circumstances of the case when a father has executed a sale deed in favour of his sons on the basis of a power of attorney executed by his mother in-law disentitling the petitioners to seek injunction.

I do not find any reason to hold that the physical possession of the land was delivered to the petitioners. The finding recorded cannot be said to be suffering from any patent illegality or irregularity, which may call for interference of this Court in exercise of its revisional jurisdiction.

Dismissed in limine.

(HEMANT GUPTA)
JUDGE

December 18, 2006
**mohinder*